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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,280	02/19/2004	Krishna Mangipudi	20496/1 CON	4251

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EXAMINER

DONAGHUE, LARRY D

ART UNIT	PAPER NUMBER
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2154

DATE MAILED: 08/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/782,280

Applicant(s)

MANGIPUDI ET AL.

Examiner

Larry D. Donaghue

Art Unit

2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☒ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. Claims 1-3 are presented for examination.
2. In the Office Action, the Examiner objects to certain publications listed in the Information Disclosure Statement ("IDS") filed on February 19, 2004 for failure to with the provisions of 37 C.F.R. §§ 1.97, 1.98 and MPEP § 609. Examiner states that insufficient information is given regarding the date and place of publication of certain references from the World Wide Web. Applicant respectfully submits that sufficient publication information is disclosed in the IDS.

Applicant respectfully asks for reconsideration of the information disclosed in identifying the references. Applicant has provided the titles, relevant pages, and the URL of the web addresses, as the publication location, for each publication. Applicant has also included the date on which the publications were taken from the internet. Applicant believes this date, Nov. 18, 1999, as well as the other biographical information given, provides sufficient publication information to warrant the Examiner's consideration. No other biographical information for these publications was readily available to the Applicant.

3. Note the highlighted section, examiner has no authority to over rule the express statement of the Rules.

4. 37 CFR 1.98. Content of information disclosure statement.

(a) Any information disclosure statement filed under § 1.97 shall include:

- (1) A list of all patents, publications, applications, or other information submitted for consideration by the Office;

- (2) A legible copy of:

- (i) Each U.S. patent application publication and U.S. and foreign patent;

- (ii) Each publication or that portion which caused it to be listed;

- (iii) For each cited pending U.S. application, the application specification including the claims, and any drawing of the application, or that portion of the application which caused it to be listed including any claims directed to that portion; and

- (iv) All other information or that portion which caused it to be listed; and

- (3) (i) A concise explanation of the relevance, as it is presently understood by the individual designated in § 1.56(c) most knowledgeable about the content of the information, of each patent, publication, or other information listed that is not in the English language. The concise explanation may be either separate from applicant's specification or incorporated therein.

- (ii) A copy of the translation if a written English-language translation of a non-English-language document, or portion thereof, is within the possession, custody, or control of, or is readily available to any individual designated in § 1.56(c).

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- (b) (1) Each U.S. patent listed in an information disclosure statement must be identified by inventor, patent number, and issue date.
- (2) Each U.S. patent application publication listed in an information disclosure statement shall be identified by applicant, patent application publication number, and publication date.
- (3) Each U.S. application listed in an information disclosure statement must be identified by the inventor, application number, and filing date.
- (4) Each foreign patent or published foreign patent application listed in an information disclosure statement must be identified by the country or patent office which issued the patent or published the application, an appropriate document number, and the publication date indicated on the patent or published application.
- (5) Each publication listed in an information disclosure statement must be identified by publisher, author (if any), title, relevant pages of the publication, date, and place of publication.**

5. The rejection is maintained and set forth below.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Jin et al. (6,189,033).

Jin et al., taught the invention as claimed including a method for implementing class of service among a plurality of clients (11a-11n) sending requests seeking access to sites hosted on a plurality of back-end servers (108a-n), comprising the steps of grouping at least one of said plurality of back-end servers into a respective one of a plurality of service classes (col. 8, lines 32-45); receiving a client request for host access at a front end processor (100); selecting a class of service from said plurality of service classes according to at least one selected parameter of said request (col. 6, lines 19-26); and distributing said request to a back-end server in said selected class of service according to the load of each of said at least one of said back-end servers in the selected service class (col. 6, lines 11-59).

As to claim 2, Jin et al. taught the least one selected parameter is/are selected from a group consisting of user authentication, virtual site level class of service and client level class of service; wherein a user authentication identifies a subscribed class for an authenticated user; a virtual site level class of service is determined by host name and selected protocol; and a client level class of service is determined as a function of the request/transaction, service/protocol, authenticated user, URL, destination port, domain of origin, source IP, destination IP, and application requested (col. 6, line 24-26 IP address mask).

As to claim 3, Jin et al. taught step of distributing the request according to the load further includes a load balancing algorithm selected from the group consisting of weighted percentage; round robin; CPU availability; least connections; and probabilistic (col. 6, lines 66 –col. 7, line 2).

7. Applicant's arguments filed 07/05/2005 have been fully considered but they are not persuasive.

8. In the remarks applicant argument directed to claims 1-2, are not commensurate in scope with the claimed invention as the claims allow for one back-end processor per group. Jin et al. taught dividing the content sites (back-end servers into classes (grouping) of content sites (Col. 6, lines 39-42) and Jin et al. taught that the access is based on resource utilization (load balancing).

9. As to claim 3, Applicants argues Jin et al. does not teach distributing request the based on load balancing algorithms. The claim set forth that one of the algorithms is CPU availability, Jin et al. taught that the access is based on resource utilization one of which is CPU, what is utilized is available.

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10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Larry D. Donaghue whose telephone number is 571-272-3962. The examiner can normally be reached on M-F 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on 571-272-3964. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LARRY D. DONAGHUE
PRIMARY EXAMINER

